



# MONTANA HISTORICAL SOCIETY

225 North Roberts ♦ P.O. Box 201201 ♦ Helena, MT 59620-1201  
♦ (406) 444-2694 ♦ FAX (406) 444-2696 ♦ [www.montanahistoricalsociety.org](http://www.montanahistoricalsociety.org) ♦

Friday, July 28, 2006

JUL 31 2006

NEZ PERCE NHP

SUPERINTENDENT  
NEZ PERCE NATIONAL HISTORIC PARK  
39063 US HIGHWAY 95  
SPALDING ID 83540

RE: EA scoping Preliminary Design Alternatives Bear's Paw Battlefield

Dear Superintendent:

Thank you for including us in your scoping mailing. We continue to believe that alternatives that both increase the protective presence of NPS staff on site and protect the visual qualities of the property are preferred.

We will need to see detailed visual quality analysis, particularly from various vantages on battlefield south towards the possible new visitor center location, which take into account the proposed scale of the possible visitor center complex in order to begin assessment of alternative 4 relative to alternatives 2-3. We would also require scaled plans of the proposed structures, parking areas and other improvements and relocations for each of the action alternatives in order to understand relative potential effects to the setting which is far more critical here than improved visitor services in our mind.

Please do not hesitate to contact us as you develop the tools necessary to assess potential adverse effects and are ready to initiate section 106 consultations.


Sincerely,

Stan Wilmoth, Ph.D.  
State Archaeologist/Deputy, SHPO



STATE HISTORIC PRESERVATION OFFICE ♦ 1410 8<sup>th</sup> Ave ♦ P.O. Box 201202 ♦ Helena, MT 59620-1202  
♦ (406) 444-7715 ♦ FAX (406) 444-6575

Monday, April 06, 2009

  
SUPERINTENDENT  
NEZ PERCE NATIONAL HISTORIC PARK  
POB 1000  
39063 US HIGHWAY 95  
LAPWAI, ID 83540

RE: EA IMPROVE VISTOR SERVICES  
AT BEAR PAW BATTLEFIELD 03/2009

Dear Superintendent Somers:

As a result of a concerned citizen's call we learned of the above referenced EA. We are concerned for 1) we were not requested to comment on the document under either the National Historic Preservation Act (NHPA) or the NEPA, 2) our earlier comments for the scoping document were either misunderstood or misrepresented in this document, and 3) this documents reflects a severe if not fatal misunderstanding of the statutory and regulatory requirements of the NHPA.

Page 19 of the EA states that SHPO and affected Tribes will be contacted **after** the EA has been completed and the subsequent decision document finalized and that MT SHPO requested the additional necessary information (e.g. visual quality analysis and proposed scaled construction drawings) "upon selection of an Alternative."

That is not what we requested (07/28/06, see attached); therein we stated – alternatives increasing protective NPS presence and protecting visual qualities are preferred and far more critical than improved visitor services, and that we needed the scaled drawings and visual analysis in order to assess the four alternatives under the NHPA, and that we anticipated the NPS initiating consultation once that information was available. Clearly notifying us after an alternative is selected would preempt any meaningful consideration of our comments (or those of the affected Tribes, or the Advisory Council on Historic Preservation (ACHP)) under the NHPA.

On the assumption that neglecting to request the comments of the affected Tribes and the SHPO prior to reaching a decision with the clear potential to adversely affect a National Historic Landmark is an misunderstanding of the NHPA we point out here at length that the regulations require agencies to consult with us (and affected Tribes) while making decisions under NEPA, and that the timing for consultation revolves first and foremost around whether or not the decision constrains future options to consider, minimize or avoid effects to Historic Properties as alternatives are selected/implemented.

Under 36 CFR 800, any NEPA ROD or FONSI must follow, rather than precede, resolution of adverse effects under the NHPA since a ROD/FONSI ultimately leading to development without consideration of future, interrelated, or dependent effects under 36 CFR 800 could foreclose on the opportunity to avoid adverse effects or to provide the ACHP an opportunity to comment. It is important that earlier but sequential actions do not constrain options of later dependent actions to the extent that adverse effects cannot be avoided. Implementing regulations of the NHPA require formal notification to SHPOs, THPOs, affected Tribes and the ACHP in advance (36 CFR 800.8(c)) of the proposed use of NEPA documents for consideration. RODs and FONSI are in and of themselves undertakings, decisions that often have the potential to affect Historic Properties, and when that is the case, findings and determinations for the purposes of meeting section 106 of the NHPA should be made prior to making a final decision on a NEPA document (unless a PA stipulates how those will be carried out in the future after the decision is made). Thus section 106 should not only be initiated but completed prior to a NEPA decision document and that means SHPO, Tribes and the ACHP must be given a reasonable opportunity to comment prior to a decision.

Further, and perhaps more important in this case, in addition to the standard requirements of section 106 of the NHPA, when an National Historic Landmark may be directly and adversely affected section 110 (F) of the NHPA requires federal agencies to the maximum extent possible, plan and act as is necessary to minimize or avoid harm to a NHL (USC 470h-2(F)). That can not happen under the NHPA if the above parties (including the ACHP) are not consulted prior to an EA decision.

As the EA points out very little archaeological knowledge has developed regarding the Battlefield and very few places in the vicinity can with any certainty be said not to have archaeological potential. In addition to the visual assessments we recommend each ground disturbing alternative locale be assessed for archaeological potential – this includes consideration of the need for archaeological testing prior to a decision committing the NPS to that location. Please supply the requested information to the SHPO, effected Tribes and the ACHP with a request to consult on possible adverse effects to the Bear Paw Battlefield National Historic Landmark prior to moving forward with a FONSI or other record of decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Wilmoth". The signature is fluid and cursive, with a large, stylized "A" at the end.

Stan Wilmoth, Ph.D.  
State Archaeologist/ Deputy, SHPO

March 19, 2013

JASON LYON  
NEZ PERCE NATIONAL HISTORIC PARK  
39063 US HIGHWAY 95  
LAPWAI ID 83540

RE: Archeological Survey/Visual Impact Analysis for Potential Improved Facility Locations at Bear Paw Battlefield

Dear Jason:

Thank you for requesting our review and comment regarding the proposed facilities changes at Bear Paw Battlefield. Our comments today are meant to address the archaeological and visual impact studies, and request further clarification and information before concurring in an effect finding. We agree with the methods and findings regarding the pedestrian archaeological inventory of 8 acres considered for alternatives 2/3 and 4. We agree that the future additional consideration of monitoring and testing as described in the report are warranted. We also believe the visual analysis was very useful for characterizing likely visual intrusions.

- We *do not* at this point concur in the proposed *No Adverse Effect* for alternatives 2/3.
- We can concur that alternative 4 would result in *Adverse Effects*.
- The no action alternative would result in continuing *Adverse Effects* and would not improve visitant use and values of the Battlefield in ways desired by the Nez Perce and many others to whom the park means so much.

As I mentioned in our email last week because of the sensitivity and importance of this property I asked our two in-house National Register experts and our Compliance Officer to join me in reviewing your package. I also asked our Architectural Specialist for advice. We are unanimous in the conclusion that either alternative 2 or 3 would also have an adverse visual effect as we understand the alternatives. But, we all also agree the intrusion on the Battlefield under 2 or 3 would be less than that which already exists from existing facilities. That lessened intrusion and our cognizance of the importance of the Nez Perce tribal input and needs leads us to conclude that our preferred alternative would likely be 2 or 3 following receipt of further information.

We find that enough detail is lacking for us to assess the potential for effects of the in-town portion of alternative 3. Loss of funding at the Blain County Museum is mentioned; what about public involvement/support for alternative 3? Are there other potential effects to Historic Properties from the in-town development? We would also like to see consideration of daylighted or semi subterranean structure design and sod roofing at the Battlefield under 2/3. Of course as the package indicates there

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are many construction design elements in alternative 2/3 which are not specified for the on-battlefield structures – final bid plans, color and texture for example- knowledge of which would allow us to consider an effect finding. I know you are not planning shiny red roofs but we would like to see a definite proposal for an effect finding. If those proposals are not available before a decision is made we suggest an MOA with phased SHPO review might work (initial architectural discussion, 30% design, 75% and final bid set of drawings/stipulations).

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan', with a stylized flourish extending from the end.

Stan Wilmoth, Ph.D.  
State Archaeologist/Deputy, SHPO

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw Site Visit**

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov

Wed, Apr 25, 2012 at 9:30 AM

Jason: We were surprised to hear that our new compliance officer could not start until may 21. Mark agreed this would be a good first field visit for her. Is there any way we could look at the end of that week like the 24 or 25th? My wife is now also looking at some medical stuff in Seattle that week I first suggested. Thanks for considering and apologies, Stan.

-----Original Message-----

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw Site Visit**

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov

Wed, Apr 25, 2012 at 9:58 AM

Thanks Stan

-----Original Message-----

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw Site Visit**

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov

Mon, Apr 30, 2012 at 11:29 AM

Jason: Probably around 1130 but I d like to confirm closer to date. Stan.

-----Original Message-----

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw Site Visit**

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov

Wed, May 16, 2012 at 7:26 AM

Let's Shoot for 11:30 (on the 24th). Stan.

-----Original Message-----

Lyon, Jason <jason\_lyon@nps.gov>

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**cell phone number?**

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov

Wed, May 23, 2012 at 9:52 AM

Jason: do you have cell phone number in case? My is See you tomorrow at trailhead. Stan.

Lyon, Jason <jason\_lyon@nps.gov>

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## RE: Bear Paw Battlefield

1 message

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**swilmoth@mt.gov** <swilmoth@mt.gov>  
To: Jason\_Lyon@nps.gov, KOre@mt.gov

Thu, Sep 20, 2012 at 7:20 AM

Hi Jason: Sending it to Baumler is still appropriate. Thanks, Stan.

-----Original Message-----

Lyon, Jason <jason\_lyon@nps.gov>

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## Bear Paws

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Jason\_Lyon@nps.gov" <Jason\_Lyon@nps.gov>

Thu, Mar 14, 2013 at 2:14 PM

Hey Jason: we received the Bear Paws Battlefield package. I have asked Kathryn whom you met, as well as, our two National Register persons John Boughton and Kate Hampton to look at it before me and share insights. I am hoping any short sightedness on my part will not cloud our judgment. Kate has looked at it and mentioned that she did not see any reference to tribal preferences. I believe you have information regarding some of that – can you share as part of the pkg.? or was that included in previous EA? If so can you resend that etc. We all believe tribal input is pretty darn important here, as I know you agree. Thanks Stan.

Lyon, Jason <jason\_lyon@nps.gov>

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## RE: Bear Paws

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Fri, Mar 15, 2013 at 9:58 AM

Thank you Jason – I will put this info with your pkg so we all understand. Stan

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Battlefield at Bear Paw**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Thu, Sep 12, 2013 at 10:00 AM

Tues morning will not work here. Wednesday any time before about 130 ok . Have asked pete to suggest the MOA example for phased design review. Stan

**Lyon, Jason** <jason\_lyon@nps.gov>

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**RE: Battlefield at Bear Paw**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Thu, Sep 12, 2013 at 10:28 AM

That sound good. Stan

**Lyon, Jason** <jason\_lyon@nps.gov>

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**RE: Bear Paw MOA**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Tue, Mar 4, 2014 at 8:01 AM

Hi Jason: Thanks for sending us an early draft thoughts about the MOAs. Kathryn and I looked over them. She suggests following your suggestion that the in town option be addressed as a separate action. Right now I can't see clearly one approach over the other except in so far as the possibility that whether or not the in town facility decision could effect the size/effect of the battlefield facility. For example does no in town option possibly result in a bigger, fancier battlefield facility. If they are related in that fashion I think they should be considered in a single MOA for a single decision. If the in town option is really independent of what happens at the battlefield then I agree with leaving it as a separate action.

Additionally we would like to see added some description of the restoration of the existing facilities i.e. native veg and contours either in a whereas or better in a stipulation.

At stipulation 1.a. we would like to have a design review at the 60% and the 80 or 90 % design stages. These opportunity should extend to Tribes as well. I hope you also are doing well – there are no bugs out here yet. Stan.

Lyon, Jason <jason\_lyon@nps.gov>

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**Automatic reply: Bear Paw MOA**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Thu, Mar 6, 2014 at 11:50 AM

Stan Wilmoth is out of the office until 03/17/14. He will respond when he returns. If you need immediate assistance, call (406) 444-7715

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw MOA**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Fri, Apr 4, 2014 at 8:26 AM

Sorry, I have to get back to this early next week. Stan.

Lyon, Jason <jason\_lyon@nps.gov>

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**RE: Bear Paw MOA**

1 message

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**Wilmoth, Stan** <swilmoth@mt.gov>  
To: "Lyon, Jason" <jason\_lyon@nps.gov>

Tue, Apr 8, 2014 at 9:39 AM

Jason: We have looked at the MOA and agree we are ready to go. Thanks for your efforts  
Stan